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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE ALFREDO TALAVERA,

Defendant and Appellant.

H046082

(Santa Clara County

Super. Ct. No. C1780482)

Defendant Jose Alfredo Talavera appeals from a judgment entered after he pleaded no contest to robbery of an inhabited place while acting in concert (Pen. Code, §§ 211, 213, subd. (a)(1)(A))¹ and admitted that he personally used a firearm (§ 12022.53, subd. (b)) and personally inflicted great bodily injury (§ 12022.7) during the commission of the robbery. Defendant also pleaded no contest to assault with a deadly weapon (§ 245, subd. (a)(1)) and admitted that he personally used a firearm (§ 12022.5, subd. (a)) during the commission of this offense. Pursuant to the negotiated plea agreement, the trial court sentenced defendant to 26 years and four months in prison. On appeal, defendant contends that he is entitled to a remand so the trial court can hold a hearing to determine whether he has the ability to pay various fines and fees. We find no error and affirm the judgment.

¹ All further statutory references are to the Penal Code unless otherwise specified.

I. Statement of Facts²

At approximately 4:00 a.m. on December 20, 2017, officers responded to a report of a victim who had been assaulted in his home. The victim had been sleeping when he was awakened by several people who asked him where his safe, money, jewelry, and cameras were, put a pillow case over his head, and pistol-whipped him. Though the victim complied with their demands, they punched, kicked, and pistol-whipped him numerous times before they left. The assailants took the victim's cell phone, Mercedes, and several other items, including credit cards, jewelry, a checkbook, and unique artifacts.

The victim was eventually transported to a medical facility where it was determined that he had suffered bruising, lacerations, a shattered clavicle requiring surgery, bleeding in his brain, and a fractured cheekbone.

II. Discussion

Relying on *People v. Duenas* (2019) 30 Cal.App.5th 1157 (*Duenas*), defendant argues that he is entitled to a remand so the trial court can hold a hearing to determine whether he has the ability to pay various fines and fees.

In *Duenas*, the defendant established with undisputed evidence that she was unable to pay assessments and fines. (*Duenas, supra*, 30 Cal.App.5th at pp. 1160-1162.) The *Duenas* court held that “due process of law requires the trial court to conduct an ability to pay hearing and ascertain a defendant’s present ability to pay before it imposes court facilities and court operations assessments under Penal Code section 1465.8 and Government Code section 70373.” (*Id.* at p. 1164.) The court also held that “although Penal Code section 1202.4 bars consideration of a defendant’s ability to pay unless the judge is considering increasing the fee over the statutory minimum, the execution of any

² The statement of facts is taken from the probation officer’s report.

restitution fine imposed under this statute must be stayed unless and until the trial court holds an ability to pay hearing and concludes that the defendant has the present ability to pay the restitution fine.” (*Ibid.*)

A defendant who fails to object to imposition of a restitution fine and assessments on due process grounds at the sentencing hearing forfeits the claim on appeal. (*People v. Fransden* (2019) 33 Cal.App.5th 1126, 1153-1155; contra, *People v. Castellano* (2019) 33 Cal.App.5th 485, 489.)

In the present case, the trial court imposed a \$300 restitution fine (§ 1202.4, subd. (b)(1)), a suspended \$300 parole revocation fine (§ 1202.45), an \$80 court security fee (§ 1465.8), and a \$60 conviction fee (Gov. Code, § 70373). After imposing these fines and fees, the trial court asked defense counsel: “Mr. Munoz, does your client waive a right to a hearing in the following areas: A breakdown of the fees, fines, and assessments imposed under these orders, as well as a hearing on his ability to pay those fees, fines, and assessments? [¶] [Defense Counsel]: He waives that. Yes.”³ Thus, here, defendant has forfeited any due process challenge.

Assuming that the issue has not been forfeited, we can infer that defendant has the ability to pay the fines and fees from future wages, including prison wages. (See *People v. Douglas* (1995) 39 Cal.App.4th 1385, 1397.) Defendant was sentenced when he was 20 years old to a term of 26 years and four months, with credit for 188 days. Since the minimum monthly prison wage is \$12 (Cal. Code Regs., tit. 15, § 3041.2), it is reasonable to assume that he would be able to pay the \$440 in fines and fees during his incarceration. If not, he will be just over 46 years old when released, and there is no reason to believe that he will not be able to earn enough to pay whatever balance remains. Accordingly, any error by the trial court in imposing \$440 in fines and fees without considering

³ The trial court also ordered that defendant’s liability for victim restitution in the amount of \$83,600 was joint and several with the codefendants.

defendant's ability to pay was harmless beyond a reasonable doubt. (*Chapman v. California* (1967) 386 U.S. 18, 24.)

Defendant argues that it cannot be presumed that he will be able to obtain employment in prison. Thus, he urges this court not to follow the long line of cases (see *People v. DeFrance* (2008) 167 Cal.App.4th 486, 505; *People v. Ramirez* (1995) 39 Cal.App.4th 1369, 1377; *People v. Hennessey* (1995) 37 Cal.App.4th 1830, 1837; *People v. Frye* (1994) 21 Cal.App.4th 1483, 1485) that have held that courts may consider future earning capacity, including the ability to earn prison wages, in determining a defendant's ability to pay fines and fees. We decline to do so.

Relying on section 987.8, subdivision (g)(2)(B), defendant also contends that "the law has already deemed [him], as an offender sentenced to prison, presumptively unable to pay for the cost of his appointed trial counsel. [Citation.] No logical reason exists why that presumption should not also extend to the fines and fees at issue here." We are not persuaded by this contention. This statute expressly states that "a defendant sentenced to state prison . . . shall be determined not to have a reasonably discernible future financial ability to reimburse the costs of his or her defense" absent "unusual circumstances." (§ 987.8, subd. (g)(2)(B).) There is no such language in the statutes at issue in the present case. Moreover, here, defense counsel informed the trial court at the sentencing hearing that he had been retained by defendant.

III. Disposition

The judgment is affirmed.

Mihara, Acting P. J.

WE CONCUR:

Grover, J.

Danner, J.

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